

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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CESAR MATEO

Plaintiff,

-v.-

Civil Action No.  
9:10-cv-1103 (GLS/TWD)

M. GUNDRUM, MARTIN,  
DANIEL MARTUSCELLO

Defendants.

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APPEARANCES:

OF COUNSEL:

**FOR THE PLAINTIFF:**

CESAR MATEO  
01-A-4789  
Plaintiff, *pro se*  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, New York 10562

**FOR THE DEFENDANTS:**

HON. ERIC T. SCHNEIDERMAN  
Attorney General for the  
State of New York  
The Capitol  
Albany, New York 12224

JAMES SEAMAN, ESQ.

GARY L. SHARPE,  
CHIEF JUDGE

**ORDER**

The above-captioned matter comes to this court following a Report-  
Recommendation by Magistrate Judge Therese Wiley Dancks, duly filed

April 30, 2012. Following ten days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the Magistrate Judge's Report-Recommendation for clear error, it is hereby

ORDERED, that the Report-Recommendation of Magistrate Judge Therese Wiley Dancks filed April 30, 2012 is ACCEPTED in its entirety for the reasons state therein, and it is further

ORDERED that the amended complaint (Dkt. No. 39) is accepted for filing as the operative pleading in this action; and it is further

ORDERED that the Clerk is directed to terminate Defendant Martuscello from this action without leave to amend; and it is further

ORDERED that Defendants Gundrum and Martin be directed to answer Plaintiff's retaliation claims within two weeks of this Order adopting the Report-Recommendation; and it is further

ORDERED that the Court dismisses the Eighth Amendment claims against Defendants Gundrum and Martin, the conspiracy claims, and the due process claims without leave to amend; and it is further

ORDERED that upon receipt from Plaintiff of the documents required for service, the Clerk shall issue summonses and forward them, along with copies of the second amended complaint (Dkt. No. 39), to the United States

Marshal for service upon Defendant Mohammed Khair; and it is further

ORDERED, that the Clerk of the Court is to serve a copy of this order upon the parties in accordance with the court's local rules.

IT IS SO ORDERED

Dated: May 23, 2012  
Albany, New York

  
Gary L. Sharpe  
Chief Judge  
U.S. District Court